



08-CV-00417-CMP

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YEDITA KHADERA, KEVIN HUDSON &
SAM RICHARDSON, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

ABM INDUSTRIES INCORPORATED,
AMERICAN BUILDING MAINTENANCE
CO. - WEST, and DOES I through X, inclusive,

Defendants.

No.

C 08-0417 *MDP*

CLASS ACTION COMPLAINT
FOR VIOLATION OF THE FAIR
LABOR STANDARDS ACT,
WASHINGTON STATE WAGE AND
HOUR LAWS, BREACH OF
CONTRACT, AND STATUTORY
DAMAGES FOR UNPAID WAGES

1. Plaintiffs Yedita Khadera, Kevin Hudson and Sam Richardson ("Plaintiffs") bring this action against the following Defendant entities: ABM Industries Incorporated, American Building Maintenance (form unknown), American Building Maintenance Co. - West and Does I through X. All of the above-named defendant entities are referred to in this complaint as collectively "ABM" or "Defendants." "Defendants" herein means each of the Defendants as well as all of them.

2. Plaintiffs bring this action on behalf of themselves and all others similarly situated, allege upon information and belief, which is based upon the investigation of their

ORIGINAL

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Case No.



HAGENS BERMAN
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101
TELEPHONE (206) 423-7292 • FACSIMILE (206) 423-0594

counsel, except as to the allegations concerning Plaintiffs or their counsel which are made upon Plaintiffs' personal knowledge, as follows.

I. NATURE OF THE ACTION

3. This is a wage and hour action to vindicate the rights afforded employees by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), Washington employment law and Washington contract law. This action is brought by Plaintiffs for themselves and on behalf of former and current non-exempt Washington employees of ABM.

4. This action seeks to vindicate rights arising from ABM's systematic failure to pay its Washington janitorial employees in conformance with Federal and Washington labor laws.

II. JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction based on federal question jurisdiction pursuant to 28 U.S.C. § 1331 and the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b) and § 217.

6. This Court also has supplemental jurisdiction over the Washington state-law claims pursuant 28 U.S.C. § 1367(a), because these claims are so related to the federal claims that they form part of the same case and controversy under Article III of the U.S. Constitution. This Court is empowered to grant declaratory relief pursuant to 28 U.S.C. § 2201.

7. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. § 1391(b) and (c) because this District is the district in which at least one of the Defendants resides and a district in which a substantial part of the events or omissions giving rise to the claims occurred and where at least one of the Plaintiffs resides.

III. PARTIES

A. Plaintiffs

8. Plaintiffs are Washington residents at all relevant times. Plaintiffs are, or were, non-exempt janitorial employees employed by ABM and its Subsidiaries and business units to work in the Defendants' business operations at all relevant times. As a result of Defendants'

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HAGENS BERMAN
SOBOL SHAPIRO LLP

1301 FIRST AVENUE, SUITE 2900 • SEATTLE, WA 98101
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1 violations of the Labor Code, Plaintiffs have suffered injury-in-fact and have lost money or
2 property as a result of Defendants' practices. This injury-in-fact and lost money or property
3 consists of the lost wages, premium pay, and other harms provided by the Labor Code as detailed
4 in this Complaint. A tally of these harms cannot readily be determined as the necessary records
5 are held nearly exclusively in Defendants' possession, custody, and control. However, on
6 information and belief, this injury-in-fact amounts to millions of dollars for the class. Plaintiffs,
7 and the class they seek to represent, were regularly subjected to, or had personal knowledge of,
8 the violations described in the Complaint and/or the allegations contained herein made on
9 information and belief based upon investigation of counsel.

10 9. Plaintiff Yedita Khadera ("Khadera") is a Washington State resident who resides
11 in Bellevue, Washinton. Khadera has been employed by Defendants as a non-exempt janitorial
12 employee between November 22, 2004 and March 5, 2007. Khadera was terminated for her
13 efforts to enforce employee rights. Khadera was required to work off the clock prior to her
14 scheduled shift, was denied the opportunity to receive all of her required rest breaks, failed to
15 receive all of her overtime pay, and did not receive pay for her on-duty meal periods. Khadera
16 has been substantially damaged and harmed by the actions of Defendants as described in the
17 Complaint.

18 10. Plaintiff Kevin Hudson ("Hudson") is a Washington State resident. At all
19 relevant times herein, Hudson has been employed by Defendants as a non-exempt janitorial
20 employee and is presently employed by Defendants. Hudson was required to work off the clock
21 prior to his scheduled shift, was denied the opportunity to receive all of his required rest breaks,
22 failed to receive all of his overtime pay, and did not receive pay for his on-duty meal periods.
23 Hudson has been substantially damaged and harmed by the actions of Defendants as described in
24 the Complaint.

25 11. Plaintiff Sam Richardson ("Richardson") is a Washington State resident. At all
26 relevant times herein, Richardson has been employed by Defendants as a non-exempt janitorial



employee and is presently employed by Defendants. Richardson was required to work off the clock prior to his scheduled shift, was denied the opportunity to receive all of his required rest breaks, failed to receive all of his overtime pay, and did not receive pay for his on-duty meal periods. Richardson has been substantially damaged and harmed by the actions of Defendants as described in the Complaint.

B. Defendants

12. Defendant ABM Industries Incorporated ("ABM Industries") is a facility services contractor with some 75,000 employees nationwide who provide janitorial, parking, security, engineering, lighting, and mechanical services of thousands of commercial, industrial, institutional, and retail facilities in hundreds of cities. The Corporate headquarters of ABM Industries is located at 160 Pacific Avenue, Suite 222, San Francisco, California 94111. ABM Industries has created a maze of wholly-owned and closely controlled business units and subsidiaries in an improper attempt to insulate itself from liability from its own actions. On information and belief, ABM Industries employed Plaintiffs.

13. Defendant American Building Maintenance Co. - West ("ABM West") is a California corporation and a wholly-owned and controlled subsidiary of ABM Janitorial Services Inc., which in turn is a wholly-owned and controlled subsidiary of ABM Industries. ABM West is a citizen of California and has its headquarters at 160 Pacific Avenue, Suite 222, San Francisco, California 94111. On information and belief, ABM West also employed Plaintiffs.

14. At all times relevant hereto, Defendants DOES I through X, were and now are corporations, firms, partnerships, associations or other legal entities who committed the acts alleged herein, and acted within the scope of their agency, with the consent, permission, authorization and knowledge of the others, and in furtherance of both their interests and the interests of Defendants they aided and abetted, and with whom they conspired, as set forth below; that the true names, identities or capacities whether individual, corporate, associate or otherwise of the Defendants DOES I through X, inclusive are presently unknown to Plaintiffs,

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HAGENS BERMAN
SOBOL SHAPIRO LLP

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TELEPHONE (206) 423-7292 • FACSIMILE (206) 423-0594

whom therefore sues said Defendants by such fictitious names; that the Plaintiffs are informed and does believe and thereupon alleges that each of the Defendants sued herein as DOES I through X are responsible in some manner for the events and happenings herein referred to, which thereby proximately caused the injuries and damages to the Plaintiffs alleged herein; that when their true names and capacities of such Defendants become known, Plaintiffs will ask leave of this Court to amend this Complaint to insert the true names, identities and capacities, together with proper charges and allegations.

C. ABM Industries Exercises Complete Control Over Other Defendants and Its Other Subsidiaries

15. Pursuant to ABM Industries' 2006 10-K filing with the Securities and Exchange Commission, Defendant ABM Industries had the following subsidiaries as of October 31, 2004:

Name	State of Incorporation	Percentage of Voting Securities Owned by Immediate Registrant
ABM Industries Incorporated	Delaware	
(*) ABM Amtech Incorporated	California	100%
ABM Co. of Boston	California	100%
ABM Engineering Services Company	California	100%
ABM Facility Services Company	California	100%
ABM Family Fund Corporation	California	n/a
ABM Global Facility Services	California	100%
International Technology Facility Services, LLC	California	50%
ABM Industries Charitable Foundation	California	n/a
ABM Janitorial Northeast, Inc.	California	100%
ABM Janitorial Services — Northern California	California	100%
ABM Janitorial Services Co., Ltd.	British Columbia	100%
ABM Lakeside, Inc.	California	100%
ABM Mid-Atlantic, Inc.	California	100%
ABM Payroll Service, Inc.	California	100%
ABM Security Services, Inc.	California	100%
ABM Supply Company	California	100%
ABMI Investment Co. ***	California	100%
American Building Maintenance Co.	California	100%
American Building Maintenance Co. of Georgia	California	100%
American Building Maintenance Co. of Hawaii**	California	100%
Allied Maintenance Services, Inc.	Hawaii	100%
American Building Maintenance Co. of Illinois	California	100%

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1	American Building Maintenance Co. of Kentucky	California	100%
2	American Building Maintenance Co. of New York	California	100%
3	American Building Maintenance Co. of New York — Manhattan	California	100%
4	American Building Maintenance Co. of Utah**	California	100%
5	American Building Maintenance Co. — West	California	100%
6	American Public Services	California	100%
7	American Commercial Security Services of New York, Inc.	California	100%
8	American Security and Investigative Services, Inc.	California	100%
9	ABMI Security Services, Inc.	California	100%
10	American Commercial Security Services, Inc.	California	100%
11	Ampco — M	California	99%
12	Ampco System Parking	California	100%
13	Amtech Energy Services**	California	100%
14	Amtech Lighting & Electrical Services	California	100%
15	Amtech Lighting Services	California	100%
16	Amtech Lighting Services of the Midwest	California	100%
17	Amtech Reliable Elevator Company of Texas**	Texas	100%
18	Beehive Parking, Inc.**	Utah	100%
19	Bonded Maintenance Company	Texas	100%
20	Bradford Building Services, Inc.	California	100%
21	Canadian Building Maintenance Company, Ltd.	British Columbia	100%
22	Supreme Building Maintenance, Ltd.	British Columbia	100%
23	CommAir Mechanical Services	California	100%
24	Commercial Air Conditioning of Northern California, Inc.	California	100%
25	Commercial Property Services, Inc.	California	100%
26	Pansini Oakland Associates ***	California	90%
	Servall Services, Inc.	Texas	100%
	SSA Security, Inc.	California	100%
	Elite Security, Inc.	California	100%
	System Parking, Inc.	California	100%
	Towel and Linen Service, Inc.**	California	100%
	(*) Subsidiary relationship to ABM Industries Incorporated or to subsidiary parents shown by progressive indentation.		
	(**) Inactive companies		
	(***) A Limited Partnership		

16. The 2004 10-K constitutes an admission of ABM Industries that ABM Industries is a joint employer of the employees of ABM Industries and its Subsidiaries. In particular, the 10-K defines "Company" for purposes of the filing as "ABM *and* its subsidiaries" (emphasis added) and states expressly at pages 5-6 of the 10-K:

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SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

Employees

The Company employs approximately 73,000 persons, of whom the vast majority are service employees who perform janitorial, parking, security, engineering and lighting services.

Approximately 29,000 of these employees are covered under collective bargaining agreements at the local level. There are about 4,000 employees with executive, managerial, supervisory, administrative, professional, sales, marketing or clerical responsibilities, or other office assignments.

The Company's 2006 10-K claims similarly, that:

The Company employs approximately 75,000 persons, of whom the vast majority are service employees who perform janitorial, parking, security, engineering and lighting services.

Approximately 29,000 of these employees are covered under collective bargaining agreements at the local level. There are about 4,000 employees with executive, managerial, supervisory, administrative, professional, sales, marketing or clerical responsibilities, or other office assignments.

17. On December 22, 2006, ABM Industries filed with the United States Securities and Exchange Commission its Annual Report ("10-K") for the Fiscal Year ending October 31, 2006. As Exhibit 21.1 of this filing ABM Industries must list all of its subsidiaries which it lists as:

Name	State of Incorporation	Percentage of Voting Securities Owned by Immediate Parent Registrant
ABM Industries Incorporated	Delaware	
(*) ABM Facility Services Company	California	100%
ABM Engineering Services Company	California	100%
ABM CMS, Inc. **	California	100%
ABM Janitorial Services, Inc.	Delaware	100%
ABM Co. of Boston	California	100%
ABM Janitorial Northeast, Inc.	California	100%
ABM Janitorial — Northern California	California	100%
ABM Mid-Atlantic, Inc.	California	100%
American Building Maintenance Co.	California	100%
American Building Maintenance Co. — West	California	100%

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SOBOL SHAPIRO LLP

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1	American Building Maintenance Co. of Georgia	California	100%
2	American Building Maintenance Co. of Hawaii	California	100%
3	Allied Maintenance Services, Inc.	Hawaii	100%
4	American Building Maintenance Co. of Kent.	California	100%
5	American Building Maintenance Co. of New York	California	100%
6	American Building Maintenance Co. of New York — Manhattan	California	100%
7	Bonded Maintenance Company	Texas	100%
8	Bradford Building Services, Inc.	California	100%
9	Servall Services, Inc.	Texas	100%
10	ABM Janitorial Services Co., Ltd.	British Columbia	100%
11	ABM Payroll Service, Inc.	California	100%
12	ABM Security Services, Inc.	California	100%
13	SSA Security, Inc.	California	100%
14	Elite Security, Inc.	California	100%
15	American Public Services	California	100%
16	Ampco Pacific Airpark, LLC***	California	60%
17	Ampco System Parking	California	100%
18	Amtech Energy Services**	California	100%
19	Amtech Lighting & Electrical Services	California	100%
20	Amtech Lighting Services	California	100%
21	Amtech Lighting Services of the Midwest	California	100%
22	Amtech Reliable Elevator Company of Texas**	Texas	100%
23	Beehive Parking, Inc.**	Utah	100%
24	Canadian Building Maintenance Company, Ltd.	British Columbia	100%
25	Supreme Building Maintenance, Ltd.	British Columbia	100%
26	System Parking, Inc.	California	100%
	(*) Subsidiary relationship to ABM Industries Incorporated or to subsidiary parents shown by progressive indentation.		
	(**) Inactive companies		
	(***) A Limited Partnership		

18. ABM Industries has adopted a Corporate Code of Conduct which establishes ultimate control over all labor and employment issues by ABM Industries. This Code of Conduct states as follows:

Code of Business Conduct

The Board of Directors of ABM Industries Incorporated ("ABM") has adopted the following Code of Business Conduct and Ethics (the "Code") for all directors, officers and employees of the Company. The "Company" includes **ABM and all of its subsidiaries and affiliates.**



1 While there cannot be a specific rule for every situation you may
 2 encounter in your workday, we have adopted this Code to provide
 3 certain baseline principles for the business conduct of the
 4 Company's directors, officers and employees. In addition to this
 5 Code, you are expected to be familiar with and comply with the
 6 Company's various policies and procedures, as well as adhere to
 7 the highest ethical standards in all of your business dealings.

8 The provisions of this Code may only be waived by the President
 9 & Chief Executive Officer of ABM or, in the case of corporate and
 10 subsidiary directors and officers, by ABM's Board of Directors.
 11 Waivers by the President & Chief Executive Officer shall be
 12 reported to ABM's Board of Directors within five business days.
 13 Waivers of this Code for corporate and subsidiary directors and
 14 officers will be promptly disclosed if and as required by law or
 15 stock exchange regulation.

16 **VI. COMPLIANCE WITH LAWS, REGULATIONS AND**
 17 **RULES:** You are expected to obey and comply with all federal,
 18 state and local laws, regulations and ordinances, including but not
 19 limited to:

20 A. Immigration related laws concerning the hiring of legally
 21 documented workers;

22 **B. Employment laws concerning payment of minimum wage,**
 23 **overtime-requirements, child labor and general working**
 24 **conditions;**

25 C. Labor laws concerning worker organizing and bargaining
 26 activities;

D. Health and safety laws concerning the workplace;

E. Civil rights laws concerning harassment and job discrimination;

H. Laws concerning the proper maintenance of books, records and
 internal controls; and

I. Any other applicable federal, state or local law, regulation or
 ordinance.

In addition, you are expected to be familiar with and comply with
 the Company's various policies and procedures. Violation of
 Company work rules may result in disciplinary action, up to and
 including termination.

VII. FAIR DEALING: Each employee is expected to deal fairly
 with the Company's customers, suppliers, competitors and other



employees. You should not take unfair advantage of anyone through manipulation, concealment, abuse of confidential information, falsification, is representation of material facts or any other unfair dealing practice. Unauthorized use of covert surveillance equipment, including video, photographic or recording devices, is strictly prohibited.

XII. EMPLOYEE HEALTH AND SAFETY: The Company strives to maintain a safe and healthy work environment for its employees at all times. To that end, you are prohibited from using or possessing alcohol or drugs in violation of any federal, state or local law, regulation or ordinance or Company policy at your workplace or in connection with your work, in a Company vehicle or in any motor vehicle when used in connection with Company business. In addition, you are prohibited from threatening or using any threatening behavior, or possessing any firearm, ammunition, incendiary device or other weapon, at your workplace, in a Company vehicle or at any time in connection with Company business.

...

REPORTING ILLEGAL OR UNETHICAL BEHAVIOR

You are encouraged to talk to your supervisor, manager or human resource representative when in doubt about the best course of action to take in a particular situation. Any director or employee who believes another director, employee or any agent, consultant or contract worker is violating the Company's policies or the law or is engaging in any activity that could damage ABM's reputation to immediately call this to the attention of management, legal counsel or one or more of the following:

- Any person designated in this Code or the Guidelines for Corporate Approval as responsible for compliance in the specified area involved
- The Vice President of Internal Audit
- The Senior Vice President of Human Resources
- ABM's Compliance Hotline

The Compliance Hotline is a toll-free 24-hour service set up for employees to report possible violations of law or ABM policy. The number is 1-800-977-8674 and the Company's ID number is 980040. Employees in Canada and the United States can normally access the Hotline directly. All calls are confidential and employees may choose to make their calls anonymously. Employees may also report issues or problems by mail addressed to: ABM Compliance, ABM Industries Incorporated, 160 Pacific



Ave., Suite 222, San Francisco, CA 94111 or by email to Compliance@abm.com.

Notwithstanding any other agreement, any violation of this Code shall constitute grounds for termination of employment. In addition, some Code violations may be serious enough to result in civil or criminal fines and/or imprisonment.

A failure to report a violation is itself a violation of this Code.

Retaliation against anyone who, in good faith, reports a possible violation of any law or Company policy is expressly forbidden.

This policy places ABM Industries in complete ultimate control of the Labor and Employment practices of Defendants and the other Subsidiaries. Pursuant to this Code of Conduct, it would be a violation of this Code of Conduct for a Subsidiary to resolve or consider a wage and hour violation without guidance from ABM Industries' Compliance department to resolve this issue. This creates an absolute power of control by ABM Industries over labor and employment issues occurring at ABM Industries, its business units, and its subsidiaries.

19. As part of ABM Industries' 2005 10-K, ABM Industries' CEO signed an SEC certification statement that certifies, among other things, that ABM Industries has implemented and monitored certain controls over its Subsidiaries. This certification attests that ABM Industries' CEO has established and maintained disclosure controls within ABM's Subsidiaries so that material information regarding these Subsidiaries' financial information and the reliability of the financial information is reported directly to ABM Industries. The violations described in this Complaint are material to the financial results of ABM Industries, and therefore, the SEC certification constitutes an admission that ABM Industries was aware of the violations that occurred at its Subsidiaries.

20. Plaintiffs are informed and believe, and based thereon allege, that each of ABM Industries' Subsidiaries were controlled by and acted in all respects pertinent to this action as the agent of ABM Industries. Plaintiffs are also informed and believe, and based thereon allege, that ABM Industries and its Subsidiaries carried out a joint scheme, business plan, or policy in all



1 respects pertinent hereto, and the acts of each Defendant are legally attributable to the other
 2 Defendants. ABM Industries' control over its Subsidiaries exceeds the control normally
 3 exercised by a parent corporation.

4 IV. FACTUAL BACKGROUND

5 21. ABM is one of the largest facility services contractors listed on the New York
 6 Stock Exchange. With annual revenues in excess of \$2.4 billion and approximately 75,000
 7 employees, ABM and its Subsidiaries provide janitorial, parking, security, engineering, lighting,
 8 and mechanical services for thousands of commercial, industrial, institutional and retail facilities
 9 in hundreds of cities throughout the United States and in British Columbia, Canada. As noted in
 10 its 2005 10-K:

11 The Company performs janitorial services through a number of the
 12 Company's subsidiaries, primarily operating under the names
 13 "ABM Janitorial Services," "American Building Maintenance" and
 14 "ABM Lakeside Building Maintenance." The Company provides
 15 a wide range of basic janitorial services for a variety of facilities,
 16 including commercial office buildings, industrial plants, financial
 17 institutions, retail stores, shopping centers, warehouses, airport
 18 terminals, health and educational facilities, stadiums and arenas,
 19 and government buildings. Services provided include floor
 20 cleaning and finishing, window washing, furniture polishing,
 21 carpet cleaning and dusting, as well as other building cleaning
 22 services. The Company's Janitorial subsidiaries maintain 111
 23 offices in 42 states, the District of Columbia and one Canadian
 24 province, and operate under thousands of individually negotiated
 25 building maintenance contracts, nearly all of which are obtained by
 26 competitive bidding. The Company's Janitorial contracts are
 either fixed-price agreements or "cost-plus" (*i.e.*, the customer
 agrees to reimburse the agreed upon amount of wages and benefits,
 payroll taxes, insurance charges and other expenses plus a profit
 percentage). Generally, profit margins on maintenance contracts
 tend to be inversely proportional to the size of the contract. In
 addition to services defined within the scope of the contract, the
 Company also generates sales from extra services, such as when
 the customer requires additional cleaning, with extra services
 frequently providing higher margins. The majority of Janitorial
 contracts are for one-year periods, but are subject to termination by
 either party after 30 to 90 days' written notice and contain
 automatic renewal clauses.



1 Plaintiffs and the class are the workers who do all of the above-described janitorial work, and
 2 from which all of the profits obtained by ABM for janitorial services are derived.

3 22. For at least three years prior to the filing of this action and through to the present
 4 Defendants consistently maintained and enforced against their non-exempt janitorial employees,
 5 among others, unlawful practices and policies, in violation of federal and Washington state wage
 6 and hour laws, including:

7 a. forcing class members, including Plaintiffs, to work "off-the-clock" time
 8 without compensation;

9 b. failing to provide class members, including Plaintiffs, rest periods of at
 10 least (10) minutes per four (4) hours worked or major fraction thereof;

11 c. requiring class members, including Plaintiffs, to work on-duty meal
 12 periods at least five (5) hours without a meal period and failing to pay such employees thirty
 13 minutes for each such unpaid meal period; and

14 d. failing to pay class members, including Plaintiffs, overtime pay.

15 23. On information and belief, Defendants were on notice of the improprieties alleged
 16 herein by their employees, Plaintiffs and the class they seek to represent, and intentionally
 17 refused to rectify their unlawful policies. Defendants' violations alleged above, during all
 18 relevant times herein were willful and deliberate.

19 V. CLASS ACTION ALLEGATIONS

20 24. Plaintiffs bring this action on behalf of themselves and all others similarly situated
 21 as a class action pursuant to Fed. R. Civ. P. 23. Plaintiffs seek to represent the following opt-out
 22 "Class" composed of and defined as follows:

23 **WASHINGTON STATE LAW CLASS:** All non-exempt
 24 persons who are or have been employed by Employer Defendants
 25 in the State of Washington and who, within three years of the filing
 26 of this Complaint, have worked as hourly employees.



1 Plaintiffs reserve their right to amend or modify the class description with greater specificity to
2 further divide into subclasses or to limit to particular issues.

3 25. Plaintiffs also seek to represent the following opt-in FLSA "Class":

4 **WASHINGTON FLSA CLASS:** All non-exempt persons who
5 are or have been employed by Employer Defendants in the State of
6 Washington and who, within three years of the filing of this
7 Complaint, have worked as hourly employees.

8 26. This action has been brought and may properly be maintained as a class action
9 under the provisions of Fed. R. Civ. P. 23, because there is a well-defined community of interest
10 in the litigation and the proposed class is easily ascertainable by means of Defendants' records.

11 **A. Numerosity**

12 27. The potential members of the class as defined are so numerous that joinder of all
13 the members of the class is impracticable. While the precise number of class members has not
14 been determined at this time, Plaintiffs are informed and believe that Defendants currently
15 employ, and during the relevant time periods employed, more than 1500 persons in the State of
16 Washington as non-exempt janitorial employees during the relevant time periods and who are, or
17 have been, affected by Defendants' unlawful practices as alleged herein.

18 28. Accounting for employee turnover during the relevant periods necessarily
19 increases this number substantially. Upon information and belief, Plaintiffs allege that
20 Defendants' employment records would provide information as to the number and location of all
21 class members. Joinder of all members of the proposed class is not practicable.

22 **B. Commonality**

23 29. There are questions of law and fact common to the class predominating over any
24 questions affecting only individual class members. These common questions of law and fact
25 include, without limitation:

26 a. Whether Defendants willfully violated the Washington wage and hour
laws by not compensating Plaintiffs and other class members for all hours worked;



b. Whether Defendants willfully violated the Washington wage and hour laws by failing to compensate Plaintiffs and the class at the agreed overtime rates for work Defendants permitted them to;

c. Whether Defendants violated the Washington wage and hour laws by failing to pay thirty minutes pay for on-duty meal periods;

d. Whether Defendants violated the Washington wage and hour laws by not providing rest periods;

e. Whether Defendants violated FLSA overtime requirement by failing to compensate Plaintiffs and the class for all time worked;

f. Whether Plaintiffs and the class are entitled to compensatory damages, liquidated damages, injunctive and other types of relief.

There are no individualized factual or legal issues for the court to resolve other than the application of a formula to calculate each class members' claims.

C. Typicality

30. The claims of the Plaintiffs are typical of the claims of the class. Plaintiffs and all members of the class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of Washington and federal laws, regulations, and statutes as alleged herein. The legal issues as to which federal and state laws are violated by such conduct apply equally to Plaintiffs and the class.

D. Adequacy of Representation

31. Plaintiffs will fairly and adequately represent and protect the interests of the members of the class. Their claims are not antagonistic to those of the putative class and they have hired counsel skilled in the prosecution of employment class actions.

E. Superiority of Class Action

32. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impracticable, if not



impossible. Questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Each member of the class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice of failing to compensate class members for all time spent working and engaging in the unlawful practices herein complained of. Defendants' conduct as described above is unlawful, continuing and capable of repetition and will continue unless restrained and enjoined by the Court.

33. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. While the individual compensatory damage suffered by each class member is not insignificant, it is not substantial enough to justify the expense and burden of individual litigation. Class members have little or no interest in individually controlling the prosecution of separate actions. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Concentrating the litigation in this forum is desirable because Defendants do business in this district and at least one of the Plaintiffs resides in this district. To conduct this action as a collective action under FLSA and a conventional class action under Rule 23 presents few management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member and maximizes recovery to them.

34. WHEREFORE, Plaintiffs and the class request relief as described herein and below.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of the Fair Labor Standards Act by Failing to Pay Overtime Wages

35. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.



36. Defendants intentionally violated the rights of Plaintiffs and the class under FLSA, 29 U.S.C. § 207(a), by failing to pay overtime wages at a rate not less than one and one-half times for all hours after forty hours in any given workweek during their employment with Defendants.

37. The violations of FLSA resulted from Defendants' following pay practices: (1) paying Plaintiffs and the class based on a work schedule rather than the actual hours worked; and (2) requiring Plaintiffs and the class to work off the clock. As a result of these pay practices, Defendants failed to compensate Plaintiffs and the class at the appropriate premium rate (one and one-half times regular rate of compensation) for hours worked in excess of forty in a workweek, in violation of FLSA, 29 U.S.C. § 207(a). Defendants also failed to pay for all time worked resulting in the failure to pay overtime in violation of FLSA, 29 U.S.C. § 207(a).

38. As a result of the FLSA violations described in this count, Plaintiffs and the class are entitled to recover the amount of their unpaid overtime wages, an equal amount as liquidated damages, and reasonable attorneys fees and costs to be paid by the Defendants pursuant to 29 U.S.C. § 216(b).

39. Plaintiffs bring this claim for relief pursuant to the collective action rules under 29 U.S.C. § 216(b). For purposes of this claim for relief only, Plaintiffs attach to this complaint FLSA consent forms bearing their signatures.

SECOND CAUSE OF ACTION

Violation of Washington State Wage and Hour Laws by Failing to Pay Overtime Wages

40. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

41. Defendants engaged in an illegal employment practice of failure to pay a proper wage in the form of overtime. RCW 49.46.130 provides that employees are entitled to recover compensation at the rate of 1.5 times their regular hourly rate of pay for each hour of work worked over 40 hours per week.



42. As described herein, Defendants violated RCW 49.46.130 by employing Plaintiffs and class members in excess of 40 hours in a workweek without paying overtime. This action was willful. Defendants had actual, imputed, and/or constructive knowledge of the unlawful actions of its managerial, supervisory, and other employees, but failed to take prompt and effective remedial action.

43. Pursuant to RCW 49.46.130, Plaintiffs and the class are entitled to recover compensation at the rate of 1.5 times his or her regular hourly rate of pay for each hour of work he or she worked over 40 hours per week.

44. Plaintiffs and the class are entitled to recover their reasonable attorney fees and costs of this action pursuant to RCW 49.46.090.

THIRD CAUSE OF ACTION

Violation of Washington State Wage and Hour Laws by Failing to Provide Compensation for on-Duty Meal & Rest Periods

45. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

46. WAC 296-126-092 provides that:

(1) Employees shall be allowed a meal period of at least thirty minutes which commences no less than two hours nor more than five hours from the beginning of the shift. Meal periods shall be on the employer's time when the employee is required by the employer to remain on duty on the premises or at a prescribed work site in the interest of the employer.

47. Defendants required Plaintiffs and the class to remain on duty on the premises or at a prescribed work site in the interest of the employer and yet failed to pay for the meals as on-duty meal periods ("on the employer's time").

48. WAC 296-126-092 also provides that:

(4) Employees shall be allowed a rest period of not less than ten minutes, on the employer's time, for each four hours of working time. Rest periods shall be scheduled as near as possible to the midpoint of the work period. No employee shall be required to work more than three hours without a rest period.



49. Defendants failed to allow Plaintiffs and the class rest periods of not less than ten minutes for each four hours of working time by establishing work schedules in which such breaks were effectively impossible.

50. Plaintiffs and the class are entitled to recover their reasonable attorney fees and costs of this action pursuant to RCW 49.46.090.

FOURTH CAUSE OF ACTION

Breach of Contract

51. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

52. The Defendants entered into written and implied employment contracts with the Plaintiffs and the class whereby Defendants would pay hourly rates of pay and overtime and other working conditions as described in this Complaint.

53. The Defendants breached the contracts of employment into which they entered with the Plaintiffs and the class members by failing to comply with the promised terms and conditions of employment.

54. The Plaintiffs and the class members were at all times ready, willing, and able to, and did in fact, comply with the terms of the employment contract.

55. As a direct consequence of Defendants' breach of the employment contract, the Plaintiffs and the class suffered substantial injury.

56. As a result, the Defendants are therefore liable to the Plaintiffs and the class for actual, incidental, and consequential damages.

FIFTH CAUSE OF ACTION

Statutory Double Damages for Unpaid Wages

57. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

58. As described above, at all relevant times herein Defendants willfully and with intent to deprive Plaintiffs and the class of wages, paid Plaintiffs lower wages than to which they were entitled in violation of RCW 49.52.050.

CLASS ACTION COMPLAINT - 19
Case No.

010033-11 228150 VI



HAGENS BERMAN
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

59. Pursuant to RCW 49.52.070, Plaintiffs and the class are entitled to a penalty of double damages for all of their unpaid compensation, plus reasonable attorney fees and costs of this action.

VII. PRAYER

WHEREFORE, Plaintiffs pray for judgment as follows:

A. That the Court determine that this action may be maintained as a proper collective action pursuant to 29 U.S.C. § 216 for the FLSA claim and a proper class action pursuant to Fed.

R. Civ. P. 23 for the state law claims;

B. For the attorneys appearing on the above caption to be named class counsel;

C. For compensatory damages in an amount according to proof with interest thereon;

D. For economic and/or special damages in an amount according to proof with interest thereon;

E. For a declaratory judgment that each of the Defendants violated the Plaintiffs' rights;

F. That Defendants be enjoined from continuing the unlawful course of conduct, alleged herein;

G. For declaratory relief;

H. For premium pay and penalties;

I. For premium wages;

J. For attorneys' fees, interests and costs of suit;

K. For liquidated or double damages for failure to pay wages; and

L. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

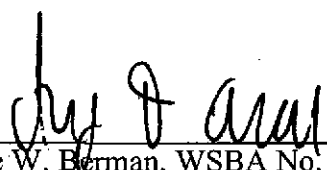
Plaintiffs hereby demand a trial by jury.



1 DATED: March 12, 2008

HAGENS BERMAN SOBOL & SHAPIRO LLP

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4 By


Steve W. Berman, WSBA No. 12536

Ivy D. Arai, WSBA No. 30859

1301 Fifth Avenue, Suite 2900

Seattle, WA 98101

Telephone: (206) 623-7292

Facsimile: (206) 623-0594

8 Proposed Class Counsel

9 Stan S. Mallison, (Cal. SBN 184191)

10 Hector R. Martinez (Cal. SBN 206336)

11 Marco A. Palau (Cal. SBN 242340)

LAW OFFICES OF MALLISON & MARTINEZ

1042 Brown Avenue, Suite A

Lafayette, CA 94549

12 Telephone: (925) 283-3842

13 Facsimile: (925) 283-3426

14 Proposed Class Counsel to appear *Pro Hac Vice*

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CLASS ACTION COMPLAINT - 21
Case No.



HAGENS BERMAN
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101

TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

**CONSENT TO JOIN THE LAWSUIT AGAINST
ABM INDUSTRIES INC, AMERICAN BUILDING MAINTENANCE CO. - WEST
and DOES 1 through X**

I consent to join as a plaintiff in an action against ABM Industries Inc., AMERICAN BUILDING MAINTENANCE CO. - WEST, and Does 1 through X (hereafter collectively referred to as "Defendant") to recover unpaid overtime wages under the Fair Labor Standards Act ("FLSA"), 29 USC §§207 and 216; unpaid wages and penalties under the Washington labor laws; relief under Washington contract and/or common law and other state or federal causes of action; attorneys' fees, interest, restitution, damages, costs; and other appropriate relief. I understand that the lawsuit will be prosecuted as a class, collective action and/or representative action on behalf of myself and other similarly situated non-exempt employees.

I hereby designate my retained counsel, the Law Offices of Mallison & Martinez and Hagens Berman Sobol Shapiro LLP to represent me in an action against Defendants. My counsel can be contacted at:

LAW OFFICES OF MALLISON & MARTINEZ

1042 Brown Avenue
Lafayette, CA 94549
Telephone: (925) 283-3842
Fax: (925) 283-3426

HAGENS BERMAN SOBOL SHAPIRO

1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Fax: (206) 623-0594

Dated: 12 March 2008

Name (printed): Yedida Khadera

Signature: Yedida Khadera

CONSENT TO JOIN THE LAWSUIT AGAINST

ABM Inc & its subsidiaries

and DOES 1 through 10

I consent to join as a plaintiff in an action against ABM Inc & subsidiaries and Does 1 through 10 (hereafter collectively referred to as "Defendant") to recover unpaid overtime wages under the Fair Labor Standards Act ("FLSA"), 29 USC §§207 and 216; unpaid wages and penalties under the ~~California~~^{Washington} Labor Code §§200, et seq.; ~~restitution and injunctive relief under the California Business and Professions Code §17200, et seq.;~~ relief under ~~California~~^{Washington} contract law; attorneys' fees and costs; and other appropriate relief. I understand that the lawsuit will be prosecuted as a class, collective action and/or representative action on behalf of myself and other similarly situated non-exempt employees.

I hereby designate my retained counsel, the Law Offices of Mallison & Martinez, to represent me in an action against Defendant. My counsel can be contact at:

LAW OFFICES OF MALLISON & MARTINEZ

1042 Brown Avenue, Suite A

Lafayette, CA 94549

Telephone: (925) 283-3842

Fax: (925) 283-3426

E-mail: WorkerRights@mallisonlaw.com

Dated: 1/22/08

Signature: Terin M. Hutchison

CONSENT TO JOIN THE LAWSUIT AGAINST

ABM Inc. & its subsidiaries
and DOES 1 through 10

I consent to join as a plaintiff in an action against ABM Inc. its subsidiaries and Does 1 through 10 (hereafter collectively referred to as "Defendant") to recover unpaid overtime wages under the Fair Labor Standards Act ("FLSA"), 29 USC §§207 and 216; unpaid wages and penalties under the ^{California} Labor Code §§200, et seq.; ~~restitution and injunctive relief under the California Business and Professions Code §17200, et seq.~~ relief under ~~California~~ contract law; attorneys' fees and costs; and other appropriate relief. I understand that the lawsuit will be prosecuted as a class, collective action and/or representative action on behalf of myself and other similarly situated non-exempt employees.

I hereby designate my retained counsel, the Law Offices of Mallison & Martinez, to represent me in an action against Defendant. My counsel can be contact at:

LAW OFFICES OF MALLISON & MARTINEZ
1042 Brown Avenue, Suite A
Lafayette, CA 94549
Telephone: (925) 283-3842
Fax: (925) 283-3426
E-mail: WorkerRights@mallisonlaw.com

Dated: 1, 22/08

Signature: Sam R. [Signature]